IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.580 OF 2002

IN

SUMMARY SUIT NO.675 OF 2002

Sudha Dwarkadas Udeshi .. Plaintiff

versus

M/s Surajmani Enterprises & anr .. Defendants

...

Mr.Rajesh C.Shah for Plaintiff.

Mr. Sanjay Jain i/b N.Srivastava for Defendant nos.1 to 6.

Mr.H.C.Mehta i/b Mehta & Co for Defendant nos. 4 to 9

CORAM : D.G. KARNIK, J

DATED : 19th January 2005.

P.C:-

1. Heard learned counsel for the parties. This Summons for Judgment arises in a suit filed by the plaintiff for recovery of a sum kept as fixed deposit with the defendants under three fixed deposit receipts

of Rs.5,00,000/-each dated 14th December, 1997. Under the said fixed deposit receipts, the defendant no.1 a partnership firm had agreed to pay the plaintiff interest at 18 % p.a. The defendant nos. 2 to 9 are the partners of defendant no.1 and money is therefore claimed from them also.

2. It is the case of the plaintiff that even after the expiry of three years, the defendants requested the plaintiff to continue the deposit on the same terms and conditions and that they would make the payment as and when required by the plaintiff. Thereafter the defendants continued to pay the interest to the plaintiff at the rate of 18 % till 31st March, 2000. The defendants did not pay repay the deposit when demanded by a notice.

3. In reply to the notice of demand, the defendants by their advocate ’s reply dated 27th November, 2001 (Exhibit J to the plaint) have admitted receipt of deposit of Rs.15,00,000/-. In para 6 they have pleaded financial difficulties and have further pleaded that the difficulties were explained to the plaintiff when she demanded the payment. They have further stated that they had promised to repay the

money in instalments and contended that no time for the repayment was fixed. They have further stated that a sum of Rs.20,000/- was repaid on 7th November, 2001 by cheque, and have advised the plaintiff to wait for the repayment in view of their financial difficulties. Thus, in reply to the notice of demand practicaly there is no defence raised by the defendants regarding receipt of the loan and the liability to repay.

4. At the hearing of the Summons for Judgment, learned counsel for the defendant nos. 2 to 6 raised two defences. One of limitation and the other that they are not liable to pay interest after the year 1997. As regards limitation, the defendants's own case is that the deposit was not renewed for any specific period therefore became payable on demand after first maturity. The plaintiff demanded repayment in November, 2001 and the suit has been filed in February, 2002 i.e. within three years of the demand. Secondly the defendants had been paying interest up to 31st March, 2000 and even by their letter dated 27th November, 2001 the defendants have not only admitted to the liability but have agreed to repay the money but only pleaded for time. Thus, in

view of the express promise to pay coupled with the payment of interest up to March 2000 would show that the suit is within limitation. As regards interest admittedly interest has been paid up to 31st March, 2000 though defence now raised is that interest was paid under a mistake. It is unlikely that a business concern would mistakenly make payment of interest under a mistake much less quarterly payment for period of four years from 1997 to 2000. In any event no defence that interest was paid by mistake and was raised in the notice reply dated 27th November, 2001 and the defence that no interest was agreed to be paid is sham and moon shine.

5. As regards the defendant nos. 7 to 9 they contend that by the interse arrangement between the parties the defendant no.2 to 6 had undertaken to pay the liability to satisfy the debts of the firm. Since defendant nos. 7 to 9 were the partners and plaintiff was not a party to any arrangement between the partners the internal arrangement between them is not binding on the third party and the plaintiff is entitled to recover the money from all the partners. In the circumstances, the plaintiff is entitled to the Summons for Judgment being made absolute. However, by

way of concession and merely as an act of mercy, I am inclined to grant to the defendants conditional leave to defend the suit. Accordingly, defendants are granted conditional leave to defend the suit subject to their depositing in court the principal sum of Rs.15,00,000/- within a period of 6 weeks. On deposit of the money, the plaintiff shall be entitled to withdraw Rs.15,00,000/- by furnishing personal bond to the court to repay the money if so ordered by the court.

6. On deposit of the money the suit shall stand transferred to the list of commercial causes. Summons for Judgment is disposed of accordingly.

D.G.KARNIK, J